IN THE HIGH COURT OF BOMBAY AT GOA

Criminal Revision Application No.14/2002

Dr. Camilo Gombatta D'Costa,
r/o. Francis Miranda Road,
Margao, Goa
(through his attorney Ms.Gloria
Wuzor, r/o. United Apartments,
Flat G-1, Taleigao, Goa 403 202) ... Applicant.

V/s.

1. State of Goa,
as represented by Officer-In-Charge,
A.N.C. Police Station,
Police H.Q., Panaji.

2. Mr. Charles Wuzor,
presently residing at
United Apartment, Flat G-1,
Taleigao, Goa 403 202. ... Respondents.

Mr. J.P. D'Souza, Advocate for the applicant.

Mr. A.P. Lawande, Public Prosecutor for the Respondent/ State.

Coram : P.V. Hardas, J.

Date : June 14, 2002.

Oral Order :

With the consent of parties, this application under Section 482 of Cr.P.C. is taken up for final disposal at the stage of admission.

This Criminal Application under Section 482 of Code of Criminal Procedure has been filed by the owner of a vehicle i.e. Maruti Zen bearing registration No.GA-02-J-4391 which was seized by the Anti-Narcotic Cell Police Station, Panaji, Goa in connection with Crime No.6/2000 under Section 20(b)(i) of the Narcotic Drugs and Psychotropic Substances Act, on the allegations that the

accused, present respondent No.2, who was driving the said vehicle when accosted by the A.N.C. refused to come out of the vehicle and the police were required to break open the window and charas weighing 169 grams was found in the said car.

2. The present applicant who is owner of the said vehicle had filed an application i.e. Criminal Misc. Application No.6/2001 before the Special Judge, NDPS., Court Mapusa praying for release of the said vehicle. The learned Special Judge, NDPS., Court Mapusa by order dated 19.1.2002 dismissed the said application and against which, the present application under Section 482 Cr.P.C. has been filed. The learned Special Judge had rejected the said application principally on the ground that the said vehicle is liable for confiscation under Section 60(3) of the NDPS Act.

3. Mr. J.P. D'Souza, the learned Advocate appearing for the applicant has urged before me that the detention of the vehicle in present offence, would not in any way assist the prosecution case any further and the release of the said vehicle is not likely to prejudicially affect the prosecution in its endeavour to prove the offence against the accused. The accused, respondent No.2 herein has filed an affidavit in this Court, as also his reply expressing his no objection for release of the said

vehicle in favour of the applicant. Mr. D'Souza also pointed out that the trial in this case has commenced and one witness has been examined. The trial is likely to take some time before it is concluded as the accused is on bail and the learned Special Judge would be giving priority to the trial in which the accused are in custody.

4. Mr. A.P. Lawande, the learned Public Prosecutor for the non-applicant/State, has raised a preliminary ground in respect of the maintainability of this application by contending that the order of the learned Special Judge, NDPS Court, Mapusa is revisable order and against which a revision would be maintainable. If the law provides remedy of revision, the party cannot resort to by filing an application under Section 482 Cr.P.C. Mr. D'Souza requests that the present application may be treated as a Criminal Revision Application under Section 397 of the Code of Criminal Procedure and be dealt with accordingly. The applicant is, therefore, permitted to convert the present application under Section 482 Cr.P.C., as Criminal Revision Application under Section 397 Cr.P.C. and the Registry is directed to register the present application under Section 482 as a Revision Application under Section 397. This application is, therefore, dealt with as Criminal Revision Application under Section 397 Cr.P.C.

5. It is next urged by Mr. Lawande, the learned P.P. that Section 60 of the NDPS Act confers powers on the Court to confiscate any animal or conveyance used in carrying any narcotic drug or psychotropic substance. According to him, it is for the owner to establish before the trial Court that the vehicle, in question, has been used by the accused after the owner had taken precaution against its use and it will be for the owner to establish before the trial Court that the said vehicle was used without his knowledge or connivance. Mr. Lawande is perfectly right in contending whether the vehicle is liable for confiscation or not, is a question which would be addressed to by the learned trial Court while deciding the criminal trial.

6. At this stage, we are concerned with the fact that the vehicle has been detained by the police and whether the release of the said vehicle would prejudicially affect the prosecution in the conduct of the trial. Admittedly, a panchanama of the vehicle was drawn which depicts that right side window was broken in order to force open the door of the car. If the said vehicle is released to the applicant/owner, prosecution would not be hampered in any manner in proving the allegations against the accused. Since the vehicle is liable for confiscation, the interest of the prosecution would be protected by imposing conditions on the owner that the

vehicle shall not be taken out of the State of Goa without prior permission of the trial Court and also that the vehicle shall not be sold to any third person. It would be for the owner of the vehicle to ultimately establish before the trial Court that the said vehicle was used without his knowledge or without his connivance in the commission of the offence. On acceptance of such a plea, it would be, of course, for the trial Court to pass necessary orders under Section 60(3) of the NDPS Act. According to me, no useful purpose would be served in detaining the vehicle. Hence, after giving my anxious consideration to the rival submissions, I am of the view that the vehicle needs to be released in favour of the applicant/owner.

7. Criminal Revision Application (unregistered) is, hereby, allowed. The order of the learned Special Judge, NDPS Court, Mapusa dated 19.1.2002 in Criminal Misc. Application No.6/2001 is, hereby, quashed and set aside. The application filed by the applicant for release of the said vehicle is allowed on the following conditions:

(i) The applicant shall execute a bond before the learned Special Judge, NDPS Court, Mapusa for Rs.2,50,000/-;

(ii) The applicant shall file an undertaking before the learned Special Judge, NDPS Court, Mapusa that he shall not allow the said vehicle to be taken out of the State of Goa till the trial is concluded and also that he shall not transfer the ownership of the vehicle in favour of any other person;

(iii) The applicant to execute an undertaking to produce the said vehicle before the Special Judge, NDPS Court, Mapusa as and when the said Court directs him to do so;

(iv) The Special Judge, NDPS Court, Mapusa shall depute a Court Officer to record a panchanama, depicting the state of the said vehicle before the said vehicle is handed over to the present applicant. The panchanama shall be signed by the applicant and the accused;

(v) The Special Judge, NDPS Court, Mapusa shall inform the R.T.O. and ask for an endorsement on the R.C. Book that the applicant would not be permitted to transfer the ownership of the said vehicle in favour of any person, till decision of the trial.

On the aforesaid conditions, the said vehicle to be released in favour of the applicant. Certified copy expedited.

P.V. Hardas, J.